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SUPREME COURT OF THE UNITED STATES
For the First Circuit

No. A-123

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER ON PETITIONER'S REQUEST FOR
EXTENSION OF TIME TO FILE A WRIT OF CERTIORARI

AUGUST 19, 1996

Honorable Justice Stevens

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
Washington, DC 20543

August 19, 1996

Ms. Anita H. Bowden
55 W. Chestnut
Chicago, IL 60610

Re: Anita H. Bowden
v. Public Building Commission of Chicago
Application No. A-123

Dear Ms. Bowden:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on August 19, 1996, extended the time to and including November 2, 1996.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By "s/Melissa A. Blalock"

Melissa A. Blalock
Assistant Clerk

NOTIFICATION LIST

Ms. Anita H. Bowden
55 W. Chestnut
Chicago, IL 60610

Gilbert S. Marchman
Appellate Court of Illinois
First District
160 N. LaSalle
14th Floor
Chicago, IL 60601

ILLINOIS SUPREME COURT
Juleann Hornyak, Clerk
Springfield, IL 62701

No. 80597

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER

LEAVE TO APPEAL

JUNE 5, 1996

ILLINOIS SUPREME COURT
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, IL 62701

June 5, 1996

Ms. Anita H. Bowden
55 W. Chestnut
Chicago, IL 60610

No. 80597 - Anita H. Bowden, petitioner, v. Public Building Commission of Chicago, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 27, 1996.

SUPREME COURT OF ILLINOIS
Springfield, IL 62701

No. 80597

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER

EXTENSION OF TIME

FEBRUARY 27, 1996

SUPREME COURT OF ILLINOIS
Springfield, IL 62701

February 27, 1996

Ms. Anita H. Bowden
55 W. Chestnut
Chicago, IL 60610

In re: No. 80597 - Anita H. Bowden, petitioner, v. Public Building Commission of Chicago,
respondent

Dear Ms. Bowden:

The following order was entered this date in the above captioned case:

The motion by petitioner, pro se, for an extension of time to and including March 27, 1996, for filing petition for leave to appeal is allowed.

Very truly yours,

"s/Juleann Hornyak"

Clerk of the Supreme Court

JH:kf

cc: Susan Gunty

APPELLATE COURT OF ILLINOIS
First Judicial District

No. 94-3223

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER

PETITION FOR REHEARING

JANUARY 23, 1996

No. 1-94-3223

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANITA L. BOWDEN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 93 CH00835
	)	
	)	Honorable
PUBLIC BUILDING COMMISSION	)	Kenneth L. Gillis
OF CHICAGO,	)	Judge Presiding
	)	
Defendant-Appellee	)	

ORDER

Upon consideration of the Petition for Rehearing filed by Plaintiff-Appellant, IT IS HEREBY ORDERED that said petition is denied.

ORDER ENTERED

JAN 23 96

"s/William Constant"
JUSTICE

"s/Joseph Gordon"
JUSTICE

_____
JUSTICE

_____

GILBERT S. MARCHMAN,
CLERK OF THE APPELLATE COURT, FIRST DISTRICT

APPELLATE COURT OF ILLINOIS
First Judicial District

No. 94-3223

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER TO SUBSTITUTE COUNSEL

DECEMBER 6, 1995

No. 1-94-3223

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANITA L. BOWDEN,	)	
	)	No. 93 CH00835
Plaintiff-Appellant,	)	(Transferred to
	)	Law Division)
v.	)	
	)	
PUBLIC BUILDING COMMISSION	)	The Honorable
OF CHICAGO,	)	Kenneth L. Gillis
	)	Presiding
Defendant-Appellee	)	

ORDER

This CAUSE COMING TO BE HEARD by this Court on a motion of Plaintiff-Appellant, ANITA H. BOWDEN, to substitute counsel, due notice having been given;

IT IS HEREBY ORDERED that said MOTION FOR SUBSTITUTE COUNSEL is hereby granted.

ENTER: "s/William Constant"
JUSTICE

"s/jJill K. Mc Nulty"
JUSTICE

DATED

DEC 06 95

"s/Theo J. Brill"
JUSTICE

Anita H. Bowden
55 West Chestnut Street
Chicago, IL 60610
(312) 642-6045

Joseph Gordon

APPELLATE COURT OF ILLINOIS
First Judicial District

No. 94-3223

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER FOR EXTENSION OF TIME

DECEMBER 6, 1995

No. 1-94-3223
IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANITA L. BOWDEN,	)	
	)	No. 93 CH00835
Plaintiff-Appellant,	)	(Transferred to
	)	Law Division)
v.	)	
	)	
PUBLIC BUILDING COMMISSION OF CHICAGO,	)	The Honorable Kenneth L. Gillis Presiding
	)	
	)	
Defendant-Appellee	)	

ORDER

This CAUSE COMING TO BE HEARD by this Court on a motion of Plaintiff-Appellant, ANITA H. BOWDEN, for an extension of time to file a Petition for Rehearing, due notice having been given.

IT IS HEREBY ORDERED that said SECOND MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING is hereby granted. Petition due by January 5, 1996.

ENTER: "s/William Constant"
JUSTICE

DATED "s/jJill K. Mc Nulty"
JUSTICE

DEC 06 95

"s/Theo J. Brill"
JUSTICE

Anita H. Bowden
55 West Chestnut Street
Chicago, IL 60610
(312) 642-6045

Joseph Gordon

APPELLATE COURT OF ILLINOIS
First Judicial District

No. 94-3223

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER FOR EXTENSION OF TIME

OCTOBER 31, 1995

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
No. 1-94-3223

ANITA L. BOWDEN,	)	
	)	
Plaintiff-Appellant,	)	
	)	No. 93 CH00835
v.	)	(Transferred to
	)	Law Division)
PUBLIC BUILDING COMMISSION OF CHICAGO,	)	
	)	
	)	
Defendant-Appellee	)	

ORDER

Upon motion for Plaintiff-Appellant, and the Court being fully advised in the premises, an objection having been filed,

IT IS ORDERED THAT THE MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR REHEARING IN THIS CASE TO AND INCLUDING NOVEMBER 22, 1995 IS ALLOWED.

Anita H. Bowden
55 West Chestnut Street
Chicago, IL 60610
(312) 642-6045

"s/William Constant"
JUSTICE

JUSTICE

OCT 31, 1995

JUSTICE

GILBERT S. MARCHMAN,
CLERK OF THE APPELLATE COURT, FIRST DISTRICT

APPELLATE COURT OF ILLINOIS
First Judicial District

No. 94-3223

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER

APPEAL

SEPTEMBER 29, 1995

FIFTH DIVISION - September 29, 1995

Notice:
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing of the disposition of the same.

No. 1-94-322

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANITA L. BOWDEN,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Plaintiff-Appellant,	)	COOK COUNTY
	)	
v.	)	No. 93 CH 00835
	)	
PUBLIC BUILDING	)	THE HONORABLE
COMMISSION OF CHICAGO	)	KENNETH L. GILLIS,
	)	JUDGE PRESIDING
Defendant-Appellee	)	

ORDER

The plaintiff, Anita Bowden, filed suit against the defendant, Public Building Commission of Chicago, alleging negligence by the defendant in its failure to maintain a safe environment in the building where the plaintiff worked. The

plaintiff alleged that his negligence exposed her to toxic chemicals for 1972 to 1993 and damaged her health. The defendant filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 1992)), contending that the plaintiff had not filed her complaint within the two-year period under the statute of limitations for personal injury actions. The plaintiff countered that her exposure from defendant's negligence was a continuing tort, so that her claim did not accrue until her exposure ended. The trial court granted the motion, from which plaintiff appeals.

We affirm.

The plaintiff worked for the City of Chicago in its Department of Health from 1972 until 1993. During this entire time, she worked in various laboratories in the basement of the Daley Center, a building which defendant operates. In 1972, plaintiff began work as a chemist in the hematology and lead chemistry laboratory. In 1986, plaintiff was transferred to the biochemistry laboratory after complaining about chemicals burning her lungs and eyes and making her sick. In September of 1993, the biochemistry lab was closed and plaintiff was transferred back to the hematology and lead chemistry lab. The plaintiff remained there until the lab closed in December 1993.

By 1984, plaintiff was having health problems associated with her job. Plaintiff saw a doctor in 1985 about

her health problems from work. In 1988, plaintiff wrote a letter to the Chicago Commissioner of Personnel to ask for a transfer to another city job due to her health problems from work. In the letter, plaintiff detailed a wide array of health problems that her work environment had caused her. She also explained in the letter that she had been a good employee for not suing the city or obtaining workers compensation. In the years from 1985-1990, plaintiff made at least ten attempts to change jobs due to the health environment of her workplace.

On March 8, 1993, plaintiff filed a complaint against the defendant alleging that its negligent design, construction, and maintenance of the Daley Center had been responsible for plaintiff's health problems. The plaintiff filed an amended complaint on September 7, 1993, and the defendant filed its answer on October 7, 1993. On June 7, 1994, the defendant moved for summary judgment under section 2-1005 on the grounds that plaintiff had not filed her complaint within the two-year period under the statute of limitations for personal injury actions. (735 ILCS 5/13-202 (West 1992).) The plaintiff countered that her exposure from defendant was a continuing tort, arguing that because this tort involved continuing and repeated tortious acts, the statute of limitations period did not begin to run until her exposure ended. However, on August 22, 1994, the trial court granted the motion, from which plaintiff appeals.

In summary judgment cases, we conduct a de novo review of the evidence in the record. (Espinoza v. Elgin, Joliet & Eastern Railway Co. (1995), 165 Ill. 2d 107, 113, 649 N.E.2d 1323.) The court must construe all evidence strictly against the movant and liberally in favor of the nonmoving party. (Espinoza, 165 Ill. 2d at 113.) Summary judgment is appropriate when there is no genuine issue of material fact and the move party's right to judgment is clear and free from doubt. (Espinoza, 165 Ill 2d at 113.) Although summary judgment is encouraged to aid the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation. (Espinoza, 165 Ill. 2d at 113.) Therefore, where reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied. (Espinoza, 165 Ill. 2d at 114.)

In the instant matter, the facts are not in question. The plaintiff does not dispute that she knew the defendant had wrongfully caused her injuries for more than two years before filing her complaint. However, plaintiff argues that when a repeated and continuing tort occurs, the cause of action does not accrue until the wrongful conduct ceases.

We disagree. The underlying purpose of the statute of limitations is to require the prosecution of a right or action within a reasonable time to prevent the loss or impairment of

available evidence and to discourage delay in the bringing of claims. (Nolan v. Johns-Manville Asbestos (1984), 85 Ill. 2d 161, 171, 421 N.E.2d 864.) Nolan is a directly applicable case in which the supreme court examined an asbestos exposure claim. The Nolan plaintiff had worked as an asbestos insulator from 1941 to May 11, 1972, and he filed his complaint on May 9, 1975. The court wrote that "the cause of action accrues when the plaintiff knows or reasonably should know of an injury and also knows or reasonable should know that the injury was caused by the wrongful acts of another." (Nolan, 85 Ill. 2d at 169.) Nolan termed this formula as the "discovery rule" and held that its action was barred if its plaintiff knew more than two years before filing that his injuries had been caused by his exposure, even though the plaintiff had additional exposure less than two years before filing. (See (Nolan, 85 Ill. 2d at 171.) Thus, Nolan directly rejected plaintiff's theory, and Nolan commented that "once it appears that an injury was wrongfully caused, a party may not slumber on its rights." Nolan, 85 Ill. 2d at 171.

Other exposure cases have continued to follow Nolan and the discovery rule. In Werckenthein v. Bucher Petrochemical Co. (1993), 248 Ill. App. 3d 282, 618 N.E.2d 902, as in the instant matter, this court examined allegations of chemical exposure from inadequate ventilation in the workplace. In denying the Werckenthein plaintiff's claim, we

held, "Here, as in Nolan, it cannot be disputed that plaintiff knew of his cancers long before 1984 [and] plaintiff was put on notice long before 1984 that his cancers had been wrongfully caused***." (Werckenthein, 248 Ill. App. 3d at 289.) This court addressed diethylstilbestrol (DES) exposure in Millar-Mintz v. Abbott Laboratories (1994), 268 Ill. App. 3d 566,645 N.E.2d 278, and asbestos exposure in VaSalle v. Celotex Corp. (1987), 161 Ill. App. 3d 808, 525 N.E.2d 684. In both cases we wrote, "This 'discovery rule' obtains with respect to latent physical injuries regardless of whether the plaintiff's injury is sustained as the result of a single traumatic event or several ostensibly innocuous occurrences." (Millar-Mintz, 268 Ill. App. 3d at 570-71; VaSalle, 161 Ill. App. 3d at 810.) Both cases followed the discovery rule and held at the cause of action for exposure accrued when the plaintiffs knew they had been wrongfully injury. Millar-Mintz, 268 Ill. App. 3d at 571; VaSalle, 161 Ill. App. 3d at 811; see also Olson v. Owens-Corning Fiberglass Corp. (1990), 198 Ill. App. 3d 1039, 1044, 556 N.E.2d (asbestos exposure claim accrues upon discovery of injury).

The Illinois Supreme Court also recently followed Nolan in Jackson Jordan, Inc. v. Leydig, Voit & Mayer (1994), 158 Ill. 2d 240, 633 N.E.2d 627. The court looked to Nolan for guidance in its issue of the accrual of an attorney negligence claim. Jackson reiterated, "The discovery rule delays the commencement of the relevant

statute of limitations until the plaintiff knows or reasonably should know that he has been injured and that his injury was wrongfully caused." (Jackson , 158 Ill. 2d at 249.) The court then focussed solely on the timing of plaintiff's initial knowledge of injury, even though the defendants had made an additional incorrect legal assessment within the applicable statute of limitations. See Jackson, 158 Ill. 2d at 246-51.

The plaintiff relies heavily on Hyon Waste Management Services, Inc. v. City of Chicago (1991), 214 Ill. App. 3d 757, 574 N.E.2d 129, in which this court stated, "When a tort involves a continuing or repeated injury *** the statute of limitations does not begin to run until the date of the last jury or when the tortious acts cease." Hyon, 214 Ill. App. 3d at 763.) However, this statement from Hyon is dictum, as the Hyon court found there was a single event and no such repeated tortious acts. (See Hertel v. Sullivan (1994), 261 Ill. App. 3d 156, 161, 633 N.E.2d 36.) Hertel confronted the Hyon dictum because its plaintiff alleged a continuing tort of emotional distress. Hertel did not follow Hyon but instead used the discovery rule, concluding, "Plaintiff has not cited any Illinois authority which squarely holds the continuing tort rule should apply beyond nuisance or trespass cases, and we decline to apply such a rule as a matter of first impression in this case." (Hertel, 261 Ill. App. 3d at 161-162.) The present plaintiff attempts to dispute Hertel by citing City of Rock Falls v. Chicago Title & Trust

Co. (1973), 13 Ill. App. 3d 359, 300 N.E.2d 331. However, Rock Falls in another case of interference with property rights, and that case does not contradict the conclusions of Hertel. (See Rock Falls, 13 Ill. App. 3d at 362 ("tort action for interference [recognizes] that a person's business is property which is entitled to protection from harm by another").) Because other cases from this court and the supreme court - Nolan, Jackson, Werckenthein, Millar-Mintz, VaSalle, and Olson - directly contradict the dictum from Hyon, we agree with Hertel and hold that the continuing tort theory does not apply beyond the realm of property rights.

For the foregoing reasons, the judgment of the trial court is affirmed.

Affirmed.

COUSINS, P.J., with GORDON and T. O'BRIEN, JJ., concurring.

APPELLATE COURT OF ILLINOIS
First Judicial District

No. 94-3223

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER

CORRECT RECORD ON APPEAL

MARCH 2, 1995

APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANITA L. BOWDEN,	)	
	)	
Plaintiff/Appellant,	)	
	)	No. 94-3223
	)	
v.	)	Circuit Court No.:
	)	93 CH00835
PUBLIC BUILDING COMMISSION	)	(Transferred to
OF CHICAGO,	)	Law Division)
	)	
Defendant/Appellee	)	

ORDER

THIS CAUSE COMING ON TO BE HEARD upon the motion of Appellant to correct record of appeal, parties having notice and this court being advised in the premises,

IT IS HEREBY ORDERED that Appellant's motion is denied.

Objections filed.

_____, 1995

ENTER:

ORDER ENTERED
MAR 02 95

"s/William Constant"
Judge Judge's No.

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Nos. 93 CH 00835 and 94L 811712

ANITA L. BOWDEN
Petitioner

v.

PUBLIC BUILDING COMMISSION OF CHICAGO
Respondent

ORDER

AUGUST 22, 1994

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ANITA BOWDEN

No. 93 CH 00835
94L 811712
transferred
to Law Division

PUBLIC BLDG. COMMISSION
OF CHICAGO

ORDER

This cause coming to be heard on motion of the defendant for summary judgment, due notice having been given and the court being fully advised in the premises,

It is hereby ordered:

Defendant's motion for a final and appealable order granting summary judgment is allowed, Plaintiff to go hence without day; there is no just reason to delay enforcement or appeal hereof.

Atty No.	27901	AUG 22 1994
Name	Gurty & McCarthy	
Attorney for	Defendant	
Address	150 So. Wacker	_____, 19__
City	Chicago	
Telephone	541-0022S	ENTER:

"/Kenneth L. Gillis"
Judge Judge's No.

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
0000292

USCS § 9658. Actions under state law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substances cases.

(b) Definitions.

(4) Federally required commencement date.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

CITY OF CHICAGO
Report of Occupational Injury of Illness

Department	Bureau/Division
Health	Division of Laboratories
Social Security No.	Payroll No
356-36-9965	2502
Ward/District	Municipal
42 /	Blue Cross
Name of Employee	Job Title
Bowden, Anita L.	Chemist I
Home Address	Home Telephone
55 West Chestnut Street-1204 Chicago, IL 60610	(312) 642-6045

Sex	Age	Marital Status	Wages
F	45	Single	$2,479.00/month

Service Time with City	Normal Working House
18 years	8:30 a.m. to 4:30 p.m.

Supervisor	Day of Injury/Illness	Date Reported
Dr. M. Su	9/12/1991	9/12/1991

Was Injury/Illness While on Assigned Department Duties?
Yes

Location of Incident by Address
50 W. Washington, Daley Center, Chicago, IL 60602

Type of Area Where Incident Happened?
Job-Site

Lost Time?	First Full Day Off Work	Last Day for Pay
Yes	9/13/91	9/11/91 Part of 9/12/91

APPENDIX 30

Details of injury/Illness. What Caused the Incident? What Duty was Employee Performing?
Be Specific and Accurate

On 9/12/91 my supervisor sent me to work in hematology. After working there for almost 2 hours where flames from Bunsen burners sucked oxygen from the air, and after going back and forth into the adjoining lead chemistry lab many times - where toxic vapors from mixtures of trichloroacetic acid, sodium hydroxide, methyl isobutyl ketone, ammonium pyrrolidine dithiocarbamate, etc. were expelled into the air - I became ill. I couldn't breathe, my lungs choked, felt suffocated, heavy/tight chested, nauseated from vapors, weak, heart fluttered, and like I'd pass out and die. I was called to Dr. Orbach's office; by time I got there, I felt worse. An ambulance was called and took me to Northwestern Hospital emergency room. Everyday when I'm in the 2nd basement of the Daley Center, where the labs surround the boiler room, I feel bad - due to the bad air.

Employee Hospitalized? No	Medical Services Rendered City Designated Medical Facility Personal Physician	
Name of Witness Carolyn Rodriguez	Name of Witness Nance Dulaj	
First Person Notified Nalda Marzette	Title Chemist IV	Business Telephone (312) 744-3838
Signature "/Anita L. Bowden"	Date 9/19/91	